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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 PACIFIC GAS AND ELECTRIC  
20 COMPANY,

21 Defendant.

Case No. CR 14 -0175 WHA

**AMICI'S REQUEST TO FILE A BRIEF  
RESPECTFULLY RECOMMENDING  
THE COURT:**

- (1) ISSUE AN ORDER TO SHOW  
CAUSE TO DETERMINE  
WHETHER PG&E COMMITTED  
CIVIL OR CRIMINAL  
CONTEMPT OF COURT,**
- (2) AS PART OF THE OSC,  
CONSIDER APPOINTMENT OF A  
SPECIAL MASTER TO  
INVESTIGATE AND REPORT  
WHETHER PG&E ENGAGED IN  
OBSTRUCTION OF JUSTICE, OR  
A CONSPIRACY TO OBSTRUCT  
JUSTICE IN THIS CRIMINAL  
PROBATION PROCEEDING.**

1       *Amici*, Alex Cannara and Gene A. Nelson, respectfully seek leave of the  
 2 Court to file the *Amicus* brief attached hereto as Exhibit 1. The attached *Amicus*  
 3 brief respectfully suggests the Court issue an Order to Show Cause (OSC) to  
 4 determine whether PG&E committed civil or criminal contempt of court by failing  
 5 to provide documents and analysis responsive to this Court's orders, and instead,  
 6 submitting responsive analysis to the California Public Utilities Commission  
 7 (CPUC) in a manner that reflected duplicity toward the CPUC and this Court.

8       *Amici*'s attached brief respectfully recommends this Court appoint a Special  
 9 Master to investigate, and promptly report to this Court by July 2021, facts relevant  
 10 to whether PG&E and its employees or agents engaged in obstruction of justice, or  
 11 in a conspiracy to obstruct justice, through the acts described above that attempted  
 12 to interfere with this Court's administration of PG&E's federal criminal probation.

13       As part of the OSC, *Amici* also respectfully recommend the Court direct  
 14 PG&E to produce and file publicly in this docket all records of its communication  
 15 with the CPUC, California Office of Emergency Services (Cal OES), the California  
 16 Governor's Office, Members, Staffs, or Committees of the California Legislature,  
 17 and members of the press regarding this Court's probation conditions, including  
 18 proposed probation conditions since September 2020 and to continue to do so  
 19 throughout the duration of PG&E's federal criminal probation.

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Federal courts have inherent authority to entertain Amicus briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249, n.34 (11th Cir. 2006).

Respectfully submitted,

CATHERINE J. KISSEE-SANDOVAL  
Associate Professor  
Santa Clara University School of Law

Dated: March 29, 2021

/s/Catherine J.K. Sandoval, Esq.,

AGUIRRE & SEVERSON, LLP

Dated: March 29, 2021

/s/Maria C. Severson  
Maria C. Severson, Esq.,  
Attorneys for *Amici* Petitioners  
Alex Cannara and Gene A. Nelson

## **Exhibit 1**

**I. AMICI RESPECTFULLY RECOMMENDS THIS COURT ISSUE AN ORDER TO SHOW CAUSE TO DETERMINE WHETHER PG&E COMMITTED CONTEMPT OF COURT OR OTHER FEDERAL OFFENSES, UP TO AND INCLUDING OBSTRUCTION OF JUSTICE, THROUGH ITS CONDUCT REGARDING PROPOSED PROBATION CONDITIONS 11 AND 12.**

*Amici* are deeply concerned that PG&E’s conduct in its federal criminal probation, particularly since this Court’s Order to Show Cause issued on December 29, 2021 (Dkt. 1294) may have exhibited contempt of court. PG&E withheld from this Court and this docket relevant documents and analysis regarding proposed probation conditions 11 and 12, conditions designed to prevent more PG&E-caused fires that result in death and destruction. During PG&E’s criminal probation, PG&E has been found responsible for the deaths of at least 115 people, the last four victims added to PG&E’s record when CalFire determined that PG&E caused the September-October 2020 Zogg fire. (Dkt. 1358, Exhibit B, CalFire report finding PG&E caused the Zogg Fire) (Dkt. No. 1277, p. 2)).

Instead of forthrightly providing analysis and documentation responsive to this Court’s questions 22 and 24 in Dkt. 1307 and probation conditions 11 and 12, PG&E engaged in a repeated and systematic campaign to unduly influence the CPUC’s comments to this Court. PG&E’s conduct raises concerns about whether PG&E interfered with the administration of justice in its federal criminal probation.

The midnight document production in response to this Court’s Order in Dkt. 1355 revealed PG&E engaged in a sustained and systematic campaign to influence the CPUC’s comments about PG&E’s probation terms. PG&E’s influence campaign targeted at CPUC staff was designed to evade scrutiny by this Court, parties to this proceeding, the Monitor, and *Amici*.

1 PG&E Dkt. 1358 and CPUC Dkt. 1360, filed shortly before midnight on  
 2 March 22 in response to Dkt. 1355, revealed that PG&E had failed to produce  
 3 relevant analysis in response to this Court’s questions 22 and 24 in Dkt. 1307,  
 4 PG&E’s March 2021 LiDAR study “CPUC Distribution HFTD Lidar Review for  
 5 Potential Inclusion in PGE Distribution PSPS Criteria 2021-03-08 (003).pdf”  
 6 [hereinafter ‘March 2021 LiDAR study’]. PG&E withheld information relevant to  
 7 the analysis of probation conditions 11 and 12 while influencing the CPUC’s  
 8 comments to this Court.

9 PG&E’s filing in Dkt. 1377 referenced LiDAR analysis in discussing its  
 10 answer to Dkt. 1307 questions 22 and 24. Yet, PG&E failed to disclose that it had  
 11 conducted and completed a March 2021 LiDAR study relevant to Dkt. 1307  
 12 questions 22 and 24 and probation conditions 11 and 12. Neither did PG&E’s  
 13 response in Dkt. 1377, nor any other filing until its midnight disgorgement of  
 14 documents on March 22, submit PG&E’s March 2021 LiDAR study to this Court  
 15 and its docket. As the clock approached the stroke of midnight on March 22, PG&E  
 16 finally revealed that it gave that LiDAR study to the CPUC on March 8 **and met**  
 17 **with the CPUC that day** (and perhaps on other occasions) to influence the CPUC’s  
 18 comments about probation conditions 11 and 12.

19 PG&E’s circumvention of this Court’s supervision of its federal criminal  
 20 probation deprived this Court and parties to this proceeding -- including the U.S.  
 21 Department of Justice (U.S. DOJ), the Monitor appointed to oversee PG&E’s  
 22 compliance with its criminal probation, and *Amici* -- the opportunity to review  
 23 PG&E’s LiDAR study prior to the midnight hours preceding the March 23, 2021  
 24 hearing. If *Amici* had been afforded the opportunity to analyze PG&E’s Lidar study  
 25 earlier than in the midnight hour before the March 23 hearing, *Amici* would have  
 26 pointed out PG&E’s flawed methodology.

27 The CPUC’s statements in its March 19 letter (Dkt. 1349, p. 4) about PG&E’s  
 28 LiDAR study raise concerns about whether PG&E communicated to CPUC staff a

1 false interpretation of the results of PG&E’s March 2021 LiDAR study. The  
 2 CPUC’s apology to this Court in Dkt. 1359 to correct the overestimate that  
 3 probation conditions 11 and 12 may cause PSPS to double does not make it clear  
 4 whether that error resulted from PG&E’s comments to the CPUC and its staff, or  
 5 whether the misinterpretation was due to flawed CPUC staff analysis.

6 If PG&E was the origin of the false representation of the consequences  
 7 indicated by its LiDAR study, such conduct would raise dire concerns about  
 8 whether PG&E engaged in contempt of court or obstruction of justice, or conspiracy  
 9 to obstruct justice in its federal criminal probation. PG&E’s circumvention of this  
 10 Court and submission of its LiDAR study to the CPUC also raises serious concerns  
 11 about whether PG&E engaged in contempt of court or engaged in obstruction of  
 12 justice. While PG&E professed its willingness to abide by probation conditions 11  
 13 and 12 in its February 19, 2021 filing (Dkt. 1310, p. 2), PG&E hoped to and did  
 14 secure its state regulator’s opposition to those same probation conditions.

15 PG&E’s pattern of concerted action raises grave concerns about whether  
 16 PG&E and its employees, agents, or representatives committed contempt of court.  
 17 It appears PG&E attempted to interfere with the administration of justice in its  
 18 federal criminal probation by attempting to influence witnesses such as the CPUC in  
 19 its probation outside of the Court’s purview and the scrutiny of the other parties,  
 20 *Amici*, and the public.

21 As part of the requested OSC, *Amici* respectfully suggests this Court engage  
 22 in fact-finding, or appoint a Special Master to engage in fact-finding and promptly  
 23 report to this Court by July 2021, to determine if a referral to the U.S. Attorney’s  
 24 Office is appropriate to examine whether PG&E committed obstruction of justice or  
 25 conspiracy to obstruct justice through its conduct described above.

26 To promote the administration of justice in PG&E’s criminal probation, *Amici*  
 27 respectfully recommend this Court’s OSC direct PG&E to publicly file in this  
 28 federal criminal probation docket on a regular basis all records of PG&E’s

1 communications (including that of its employees, officers, agents, or representatives  
 2 including its lawyers and lobbyists) with state or federal government agencies,  
 3 legislators, officers, or members of the press regarding PG&E's federal criminal  
 4 probation or its current or proposed probation conditions throughout the duration of  
 5 PG&E's federal criminal probation. Such filings should include a brief summary of  
 6 the content of the communication, the parties to the communication, and any  
 7 documents exchanged for the communication. This measure is recommended to  
 8 ensure PG&E is not circumventing this Court's supervision of its federal criminal  
 9 probation and unduly attempting to persuade other parties, including witnesses in  
 10 this probation, to influence or interfere with this Court's probation supervision and  
 11 the administration of justice.

12 **II. PG&E'S CONDUCT AND ATTEMPT TO INFLUENCE THE CPUC  
 13 TO OPPOSE THIS COURT'S PROPOSED PROBATION CONDITIONS  
 14 11 AND 12 RAISE CONCERNS ABOUT WHETHER PG&E HAS  
 15 ENGAGED IN CONTEMPT OF COURT OR OTHER OFFENSES**

16 **A. PG&E's Strategy to Oppose Proposed Probation Conditions 11 and 12  
 17 Shifted to Inducing the CPUC to Impose those Conditions After  
 18 PG&E's Feb. 19 filing in Dkt. 1310 Falsely Indicated that PG&E did  
 19 not Oppose Probation Conditions 11 and 12**

20 Following the 2020 Zogg fire, this Court proposed to modify PG&E's  
 21 probation to add probation conditions 11 and 12 requiring PG&E to take the status  
 22 of its vegetation management into account in determining whether to deenergize an  
 23 area through a PSPS. (See Dkt. 1294 issued December 29, 2021) PG&E tried to  
 24 limit this condition to trees PG&E categorized as Priority 1 and Priority 2. (Dkt  
 25 1279, filed Jan. 20, 2021, p. 4). PG&E sent the CPUC its January 20, 2021 **filing**  
 26 **and held a meeting with the CPUC the next day** about proposed probation  
 27 conditions 11 and 12. (Dkt. 1360-1, p. 2). Neither PG&E nor the CPUC has  
 28 disclosed the content of those discussions. That meeting was revealed in the

1 CPUC's document production on March 22 in response to this Court's order in Dkt  
 2 1355.

3       *Amici* in Dkt 1283, p. 24, filed on January 27, 2021, expressed concern that  
 4 PG&E's proposal to limit probation conditions 11 and 12 to Priority 1 and Priority 2  
 5 trees "creates inappropriate escape hatches from the condition and compliance with  
 6 state and federal law." *Amici* expressed concern that PG&E had failed to offer any  
 7 public analysis of its proposal, a pattern PG&E repeated in its campaign against  
 8 probation conditions 11 and 12. *Amici* observed in Dkt 1283, p. 26:

9       Neither has PG&E explained to this Court and the parties which *priority*  
 10 tier those trees and limbs were classified in, whether priority 1, priority  
 11 2, or some other unnamed priority. Without that information, this Court  
 12 and the parties before it cannot analyze PG&E's proposal to limit  
 13 mandatory consideration of vegetation management to priority 1 and 2  
 14 vegetation as PG&E has not told us what this would omit or informed  
 15 the Court of its analysis of the consequences of such exclusion.

16 At the February 3, 2021 hearing, counsel for PG&E admitted its proposed limits of  
 17 probation conditions 11 and 12 to its Priority 1 and 2 classifications would **not** have  
 18 covered the tree of concern in the Zogg fire, the tree later determined to be the Zogg  
 19 fires' cause. (Dkt. 1292, p. 12, lines 18-20; Dkt. 1458-2).

20       This Court found on February 4, 2021 that PG&E's proposed Priority 1 and  
 21 Priority 2 limitation "is too restrictive and will not sufficiently protect California  
 22 from wildfires started by PG&E." (Dkt. 1294, p. 1):

23       The limited way in which PG&E seeks to implement Proposed  
 24 Condition 11 would leave too many risks unaddressed. It would allow  
 25 PG&E, in determining which distribution lines to de-energize, to ignore  
 26 the threat of trees tall enough to be blown onto the lines. Indeed, counsel  
 27 for PG&E admitted that its proposed procedure would not have resulted  
 28 in consideration of the tall Gray Pine looming over the Girvan Line at  
 (or near) the site of the Zogg Fire or the other tall Gray Pines of concern.  
 (Dkt. 1294, p. 1).

1 The Court invited all parties and *Amici* to submit comments or objections to the  
 2 modification to proposed probation conditions 11 and 12 by February 19, with  
 3 replies due on February 26, to be heard at a hearing via Zoom on March 9, 2021.

4 On February 19, PG&E stated “PG&E has no objection to the Court’s  
 5 modified Proposed Conditions 11 and 12. PG&E commented that its “operations  
 6 teams are working to operationalize the implementation of the Proposed Conditions”  
 7 to more expressly account for “the approximate number of trees tall enough to fall  
 8 on the line irrespective of the health of the tree and irrespective of whether the tree  
 9 stands outside or inside prescribed clearances.” (Dkt. 1310, p. 2).

10 PG&E’s response in Dkt. 1310, p. 2 for the first time mentioned its intention  
 11 to use LiDAR to implement probation conditions 11 and 12:

12 so, one of the things PG&E intends to leverage is remote sensing  
 13 capabilities, such as aerial based light detection and ranging (“LiDAR”)  
 14 technology, which uses pulsed laser light to generate digital 3-D object  
 15 maps. The precise mechanics of how to effectively leverage these  
 16 capabilities in the time available prior to fire season to fulfill the letter  
 17 and spirit of the Court’s condition is being worked on by PG&E’s  
 18 operations teams.

19 PG&E’s statements that the mechanics of how to leverage its LiDAR capability was  
 20 “being worked on by PG&E’s operations teams,” did not hint that it would shortly  
 21 generate a LiDAR-based study to project the consequences of probation conditions  
 22 11 or 12.

23 PG&E’s March 22 midnight document production in response to this Court’s  
 24 order revealed PG&E sought to stoke the CPUC’s opposition to probation  
 25 conditions 11 and 12. PG&E did so, hidden from the view of this Court and the  
 26 parties to this proceeding including the U.S. DOJ and the Monitor appointed to  
 27 oversee PG&E’s probation, as well as *Amici* representing PG&E customers  
 28 concerned about PG&E’s poor public safety record, Alex Cannara and Gene Nelson.  
 PG&E has not disclosed whether it met with California Office of Emergency

1 Services (Cal OES) to encourage Cal OES to oppose probation conditions 11 and 12  
 2 or whether it shared PG&E’s 2021 LiDAR study with Cal OES prior to the March  
 3 22 midnight document disgorgement.

4 PG&E deliberately circumvented this Court’s procedure, docket and filing in  
 5 submitting documents and analysis to the CPUC instead of this Court. PG&E made  
 6 representations to the CPUC to influence the CPUC’s comments to this Court and  
 7 induce the CPUC’s opposition to probation conditions 11 and 12. In so doing,  
 8 PG&E attempted to appear cooperative while influencing the CPUC, a party this  
 9 Court invited to appear as *Amici* regarding probation conditions 11 and 12 and steps  
 10 to prevent fires such as the Zogg fire, to oppose probation conditions 11 and 12.  
 11 PG&E did so in a clandestine attempt to generate opposition to the proposed  
 12 probation conditions while preserving its appearance of cooperation before this  
 13 Court and hiding its analysis from this Court, the public, and other parties.

14

15 **B. PG&E Circumvented this Court’s Order in Dkt. 1307 to Answer**  
 16 **Questions about PG&E’s Analysis of Trees Tall Enough to Strike Its**  
**Lines While Inducing the CPUC’s Opposition to Probation Conditions**  
 17 **11 and 12**

18

19 In Dkt. 1307, this Court on February 18 asked PG&E Questions 22 and 24  
 20 regarding whether PG&E had analyzed if healthy trees had the potential to strike  
 21 PG&E’s power lines and whether such trees should be documented for PSPS or for  
 22 other purposes. PG&E’s answer to that question was also due to this Court on  
 23 March 12, 2021.

24 In Dkt. 1337, PG&E on March 12, 2021 filed its response to this Court’s  
 25 questions 7-25 propounded in Dkt. 1307. PG&E’s answer to those questions omitted  
 26 any reference to the “LiDAR” study PG&E gave to CPUC staff on March 8, 2021.  
 27 (See Dkt. 1337 at 2-4, 16, 19; cf. Dkt. 1360-1, Exhibit 4, p. 17).

28    ///

1           **Question 22** in Dkt. 1307 asked:

2           Has PG&E analyzed whether there are circumstances in which trees  
 3           that have the potential to strike power lines should be worked or  
 4           removed, even though they are healthy and not in violation of  
 5           minimum clearances required by California Public Resources Code  
 6           Section 4293, California Public Utilities Commission General Order  
 7           95, and Federal Energy Regulatory Commission FAC-003-4? If so,  
 8           what conclusions did PG&E reach? Has this issue been the subject  
 9           of any regulatory process or analysis?

10          PG&E Responded in Dkt. 1337, pgs. 17-19:

11          Yes, PG&E has analyzed whether there are circumstances in which  
 12           trees that have the potential to strike its distribution lines should be  
 13           worked or removed, even though they are healthy and not in  
 14           violation of minimum clearances required by California Public  
 15           Resources Code Section 4293, California Public Utilities  
 16           Commission General Order 95, and Federal Energy Regulatory  
 17           Commission FAC-003-4.

18          As noted above, the EVM program was originally designed to  
 19           identify for removal all potential strike trees from the top 10 risk  
 20           species, as determined by PG&E analyses of the tree species that  
 21           were responsible for causing vegetation-related ignitions. In  
 22           reviewing five years of data, PG&E identified 10 species of trees—  
 23           Black Oak, Gray Pine, Tanoak, Coast Live Oak, Live Oak,  
 24           Ponderosa Pine, Eucalyptus/Blue Gum, Douglas Fir, Valley Oak  
 25           and Monterey Pine—that were responsible for nearly 75 percent of  
 26           incidents in Tier 2 and Tier 3 HFTDs. As part of the original EVM  
 27           scope, PG&E intended to go beyond what is required by state law to  
 28           abate trees from these 10 species that were tall enough to strike  
 29           distribution lines, had a clear path to strike, and exhibited leaning or  
 30           weighting toward the line.

31          As the Court is aware, the EVM program is analyzed as part of the  
 32           regulatory processes surrounding PG&E’s annual Wildfire  
 33           Mitigation Plans. During the review process for PG&E’s 2019  
 34           Wildfire Mitigation Plan (“WMP”), “some parties asserted that  
 35           PG&E’s EVM may target significantly more trees than necessary,  
 36           given the consequences of widespread tree removal.”

1 For example, trees provide support for other trees, reduce carbon,  
 2 and provide other important ecological benefits which may be lost  
 3 due to aggressive tree removal.” See CPUC’s May 30, 2019  
 4 Decision on PG&E’s 2019 WMP Pursuant to Senate Bill 901 (“2019  
 5 WMP Decision”). The 2019 WMP Decision stated “PG&E should  
 6 only remove healthy trees if the utility has evidence that those trees  
 7 pose a risk to utility electric facilities under wildfire ignition  
 8 conditions, based on the opinion of a certified arborist.” (*Id.* at 24.)

9  
 10 In response to the CPUC’s direction in the 2019 WMP Decision,  
 11 PG&E developed its TAT. The tool was developed by a team of ISA  
 12 Certified Utility Arborists and is informed by PG&E data regarding  
 13 regional vegetation-caused contact with PG&E’s overhead electric  
 14 distribution lines. As described above, that tool is now used by pre-  
 15 inspectors on every tree within the scope of EVM that has the  
 16 potential to strike PG&E’s distribution lines if it were to fall. Among  
 17 other things, any tree with strike potential that is determined to lean  
 18 more than 25 degrees is designated for abatement, regardless of the  
 19 health or tree species. This risk-mitigation measure goes well  
 20 beyond the requirements of, *inter alia*, section 4293.

21 Based on PG&E data regarding regional vegetation-caused outages  
 22 and ignitions, PG&E also recently evaluated whether certain species  
 23 should be targeted on an accelerated basis around distribution lines  
 24 in high-fire threat areas on a “bright-line” basis, regardless of their  
 25 health, as an additional step. That resulted in the new proposal set  
 26 forth in PG&E’s March 4, 2021 submission to the Court regarding  
 27 Gray Pines and Tanoaks in particular regions. (Dkt. 1330.) This  
 28 proposal was based on PG&E data that showed that these particular  
 species may present higher risk of falling into the line in these  
 particular regions. This proposal has not yet been subject to any  
 regulatory process, but CAL FIRE and the CPUC have stated to the  
 Court that their position is that it should not be implemented as a  
 probation condition at this time. (*See* Dkt. 1335.)

29 Previous PG&E vegetation management programs have sought to  
 30 abate vegetation beyond what is required by state law, including the  
 31 Fuel Reduction program, the Accelerated Wildfire Risk Reduction  
 32 Program, and the Public Safety & Reliability program, and would  
 33 have been underpinned by analyses, including analyses of ignition  
 34 or outage data. Other analyses may have also been conducted in the

1 past that would be responsive to the Court's Question. To provide  
 2 more information on such potential analyses, PG&E would need  
 3 additional time to investigate and respond.

4 Despite answering "Yes" to question 22, PG&E did **not** submit its March 2021  
 5 Lidar study to this Court (*See* Dkt. 1337 at 17-18).

6 PG&E's analysis in Dkt. 1337 at 17-18 seems to rest on the analysis later  
 7 revealed to this Court to be based on PG&E's March 2021 LiDAR study. Yet,  
 8 PG&E did not disclose the existence of its March 2021 LiDAR study or produce it,  
 9 though it was directly responsive to this Court's questions about PG&E's analysis.  
 10 Neither did PG&E update its response in Dkt. 1310 which referred to PG&E's  
 11 intention to leverage LiDAR data to inform the Court that it had develop a LiDAR-  
 12 based analysis of probation conditions 11 and 12 as applied to years 2010-2019.  
 13 Nor did PG&E disclose that it had provided its March 2021 LiDAR study to the  
 14 CPUC on March 8, four days before its answer was due on March 12.

15 PG&E's March 2021 LiDAR study discusses PG&E's analysis indicating  
 16 there are "7.3 million trees detected through LiDAR in PG&E's HFTD distribution  
 17 corridors, of which 5.3 million trees could strike the line (Fall-in) (Docket 1358-1,  
 18 p. 7). This analysis is directly relevant to question 22 in Dkt. 1307 regarding  
 19 PG&E's analysis of "whether there are circumstances in which trees that have the  
 20 potential to strike its distribution lines should be worked or removed, even though  
 21 they are healthy." Yet, PG&E's response in Dkt. 1337 at 17-19 fails to mention its  
 22 LiDAR study or that it had shared and discussed that study with the CPUC.

23 In response to Dkt. 1307, question 22, which asked "(h)as this issue been the  
 24 subject of any regulatory process or analysis?", PG&E stated "(t)his proposal has  
 25 not yet been subject to any regulatory process, but CAL FIRE and the CPUC have  
 26 stated to the Court that their position is that it should not be implemented as a  
 27 probation condition at this time. (*See* Dkt. 1335.)"

28     ///

1 PG&E's response did not disclose that it had provided its March 2021 Lidar  
 2 study to CPUC staff and held meetings with CPUC staff to discuss this analysis.  
 3 Neither did PG&E disclose whether it had represented to the CPUC that PSPS might  
 4 double if probation conditions 11 and 12 were adopted.

5 PG&E failed to disclose it had submitted responsive analysis regarding  
 6 question 22 to its state regulator, as part of a regulatory process or analysis. If that  
 7 document was not submitted to CPUC staff as part of a regulatory process or  
 8 analysis, this raises substantial questions about PG&E's motives. Did PG&E submit  
 9 its March 2021 LiDAR study to the CPUC to influence the CPUC's opinion about  
 10 PG&E's probation conditions? Did PG&E attempt to dupe the CPUC into repeating  
 11 what may be PG&E's misrepresentation of what that document stated, misleading  
 12 the CPUC and this Court and interfering with justice?

13 Whatever PG&E's motives, PG&E knew or should have known that its  
 14 March 2021 LiDAR study was responsive to this Court's questions. PG&E's Dkt.  
 15 1354 filed on the afternoon of March 22 indicates that PG&E recognized the  
 16 importance of its March 2021 LiDAR study to the development of its probation  
 17 conditions. Yet, PG&E failed to disclose this important analysis of trees tall enough  
 18 to strike its lines with this Court. In so doing, PG&E confounded this Court's  
 19 analysis, and attempted to sidestep the administration of justice in PG&E's federal  
 20 criminal probation.

21 On March 22, in Dkt. 1354, PG&E mentioned it had provided documentation  
 22 to its state regulator regarding PG&E's analysis of probation conditions 11 and 12.  
 23 PG&E stated that following the CPUC's February 19, 2021 filing indicating concern  
 24 about outages that may result if probation conditions 11 and 12 were adopted,  
 25 PG&E communicated with the CPUC and shared documents regarding PG&E's  
 26 analysis, documents it did not produce in Dkt. 1354 or until ordered to do so just  
 27 before midnight on March 22:

28 / / /

1 After that [Feb. 19] filing by PG&E’s regulator, and as part of PG&E’s  
 2 process of analyzing and setting fire-risk thresholds to determine when  
 3 conditions warrant de-energization as part of Proposed Conditions 11  
 4 and 12, PG&E shared with the CPUC the fire risk thresholds that it has  
 5 been considering to address the issue of tall trees in proximity to  
 6 PG&E’s lines. As PG&E explained to the CPUC, it developed those  
 7 thresholds specifically to ensure that—if they had been in place in  
 8 September 2020—PG&E would have de-energized the Girvan Circuit  
 9 in the area of interest on the day the Zogg Fire ignited. PG&E also  
 10 explained to the CPUC, as it has previously stated to the Court, that  
 11 these new thresholds, if adopted, will lead to significant additional de-  
 12 energizations.

13       Nonetheless, PG&E once again failed to file in this docket its March 2021  
 14 LiDAR study it sent to, and discussed with, the CPUC on March 8th. PG&E  
 15 avoided naming its March 2021 LiDAR study or stating that it had developed and  
 16 shared a LiDAR-informed analysis as anticipated by Dkt. 1310. Instead, PG&E  
 17 referred to sharing “with the CPUC the fire risk thresholds that it has been  
 18 considering to address the issue of tall trees in proximity to PG&E’s lines.” PG&E’s  
 19 attempts to dance around the document it had shared with the CPUC, but not with  
 20 this Court, came to a crashing end when the party was over by midnight on March  
 21 22 and PG&E finally produced its “fire risk thresholds,” the March 2021 LiDAR  
 22 study.

23       PG&E’s March 22 response in Dkt. 1354 stressed that it shared documents  
 24 with the CPUC, its “regulator.” PG&E effectively admitted thereby that its March  
 25 2021 LiDAR study was subject to a regulatory process or analysis. PG&E’s  
 26 admission indicates PG&E knew its March 2021 LiDAR study was responsive to  
 27 this Court’s question 22 in Dkt. 1307, and to consideration of probation conditions  
 28 11 and 12. Yet, PG&E did not publicly disclose its March 2021 LiDAR study until  
 ordered by this Court to produce documents before midnight of March 22, 2021  
 reflecting its communications with the CPUC as indicated by Dkt. 1349 filed by the  
 CPUC on March 19.

1           A similar lack of responsiveness and candor is reflected in PG&E's response  
 2 in Dkt. 1337 (at 19-20) to Question 24 in Dkt. 1307:

3           Has PG&E analyzed whether all trees that have the potential to strike  
 4 its power lines should be documented for PSPS purposes (or other  
 5 purposes) regardless of their health and/or whether they need to be  
 6 worked? If so, what conclusions did PG&E reach? Has this been the  
 subject of any regulatory process or analysis?

7 PG&E responded in Dkt.1337:

8           Yes, PG&E has analyzed whether all trees that have the potential to  
 9 strike its distribution lines should be documented for PSPS purposes  
 10 (or other purposes) regardless of their health and/or whether they  
 11 need to be worked. PG&E has been recently working on  
 12 implementing the Court's Proposed Conditions 11 and 12 to more  
 13 expressly account in PSPS scoping for "the approximate number of  
 14 trees tall enough to fall on the line irrespective of the health of the  
 15 tree and irrespective of whether the tree stands outside or inside  
 16 prescribed clearances". To do so, one of the things PG&E intends to  
 17 leverage is remote sensing capabilities, including LiDAR  
 18 technology, which uses pulsed laser light to generate digital 3-D  
 19 object maps. PG&E's current intent is to use the tree detection  
 20 algorithm described above to provide estimates of the number of  
 21 trees with the potential to strike PG&E's lines, without regard to the  
 22 health characteristics of the tree or whether it needs to be worked.  
 23 As discussed above, the detections are not necessarily accurate at  
 24 the individual tree level, and trees are living, dynamic organisms.  
 25 But the algorithm can be used to generate relative estimates of the  
 26 distribution line's potential tree-strike exposure, which can then in  
 27 turn be used to scope distribution circuits with high vegetation  
 28 exposure for potential de-energization. This specific proposal is still  
 being developed and has not yet been the subject of a regulatory  
 process.

Further, as discussed elsewhere in this submission, for purposes of EVM, PG&E's current program scope calls for inspectors to assess every tree with strike potential with the TAT that is on the inspector's smartphone or tablet, which creates a digital record. The EVM program as a whole has been the subject of the regulatory processes surrounding PG&E's Wildfire Mitigation Plans.

1  
2 Further, one PG&E employee queried about the Court’s Question  
3 recalled informal consideration in or around 2018 of whether to  
4 document trees that were not identified for abatement during  
5 PG&E’s annual routine vegetation management patrols. The  
6 employee also recalled that PG&E inquired with two other major  
7 California utility companies as to whether they documented trees  
8 during routine patrols that did not require abatement. The employee  
9 recalled that PG&E learned through this “benchmarking” that those  
10 utilities did not document such trees. The employee recalled that the  
11 employees considering this proposal did not conclude that the  
12 proposal merited more formal analysis.

10 To identify other potential examples of when PG&E employees may  
11 have performed analysis responsive to the Court’s Question in the  
12 past, PG&E would need additional time to investigate and respond.

13 Once the CPUC and PG&E produced PG&E’s March 2021 LiDAR study in  
14 response to this Court’s order on March 22, 2021, it became clear that PG&E’s  
15 response to Question 24 is likely built on that document as it appears to draw  
16 directly from it. Yet, PG&E neither referred to nor produced that study until ordered  
17 to disgorge its communications with the CPUC referred to in Dkt. 1349.

18 PG&E’s statement in Dkt. 1337, p. 19, in response to question 24 that it “has  
19 been recently working on implementing the Court’s Proposed Conditions 11 and 12  
20 to more expressly account in PSPS scoping for “the approximate number of trees  
21 tall enough to fall on the line irrespective of the health of the tree and irrespective of  
22 whether the tree stands outside or inside prescribed clearances”” seems to refer  
23 directly to its work reflected in its March 2021 LiDAR study. Yet, PG&E failed to  
24 disclose the existence of that document, its underlying analysis, or that it had shared  
25 that document with the CPUC on March 8.

26 Dkt. 1337, p. 19 states that PG&E was preparing to implement the Court’s  
27 Proposed Conditions 11 and 12 by leveraging its “remote sensing capabilities,  
28 including LiDAR technology, which uses pulsed laser light to generate digital 3-D

1 object maps.” That response appears to be based on PG&E’s unnamed March 2021  
 2 LiDAR study. Yet, PG&E evaded identifying that study or that it had shared that  
 3 document days earlier with the CPUC.

4 As discussed below, PG&E’s failure to produce this responsive document on  
 5 March 12 deprived this Court, and parties to this criminal probation proceeding  
 6 including *Amici*, the opportunity to analyze PG&E’s methodology, assumptions, and  
 7 conclusions prior to the March 23 hearing. Had PG&E produced such analysis on  
 8 March 12, *Amici* would have carefully scrutinized PG&E’s document and sought  
 9 leave to file comments with this Court early the following week to prevent  
 10 misapprehensions based on PG&E’s model—a model which inappropriately uses  
 11 years 2010-2019. The opportunity to file comments analyzing PG&E’s March 2021  
 12 LiDAR study early in the week of March 15 may have prevented the CPUC from  
 13 filing comments on March 19 repeating what may have been PG&E’s  
 14 misrepresentation that probation conditions 11 and 12 would double PSPS. (See  
 15 Dkt. 1349, p. 5). PG&E’s March 2021 LiDAR study does not support that  
 16 inaccurate characterization.

17 Between the February 3 and the March 23, 2021 hearings in this matter,  
 18 PG&E produced thousands of pages of documents. Yet, PG&E did not produce the  
 19 one document it effectively admitted in Dkt. 1354 it had given to the CPUC. It  
 20 appears PG&E gave this analysis to the CPUC on March 8, 2021 to influence the  
 21 CPUC’s comments about probation conditions 11 and 12 and deter this Court from  
 22 adopting those proposals.

23 PG&E’s conduct willfully circumvented this Court’s criminal probation,  
 24 feigning willingness to comply with probation conditions 11 and 12 while inducing  
 25 the CPUC to oppose those proposals. PG&E’s evasion of this Court’s docket  
 26 supervising PG&E’s probation deprived this Court and parties in this proceeding  
 27 including the US DOJ, the Monitor, and *Amici* from analyzing PG&E’s  
 28 methodology, assumptions, or analysis in its LiDAR study prior to the hours just

1 after midnight on March 22, two weeks after PG&E gave that document to the  
 2 CPUC. It appears that PG&E's conduct attempted, and perhaps completed,  
 3 deliberate interference with the administration of justice before this Court.

4

5 **C. PG&E Injected Poison into The Administration of Justice in Its Federal**  
**Criminal Probation, Circumventing This Court's Orders and Selectively**  
**Submitting Information to CPUC Staff in A Manner PG&E Knew**  
**Would Minimize Public Scrutiny.**

8 PG&E injected poison into the administration of its federal criminal probation  
 9 by circumventing this Court's orders and selectively submitting information to  
 10 CPUC staff in a manner that PG&E knew would minimize public scrutiny of its  
 11 efforts. PG&E's communications with CPUC staff do not trigger the CPUC's *ex*  
 12 *parte* notice requirements.<sup>1</sup> Neither PG&E's request for a meeting with CPUC staff  
 13 nor its submission of documents to CPUC staff triggered a requirement under CPUC  
 14 Rules of Practice and Procedure for the issuance of a notice of an *ex parte* meeting.  
 15 PG&E knew that by submitting documentation to staff in this matter, it would not  
 16 have to issue a public notice that would have alerted this Court, parties to this  
 17 proceeding, and participants including *Amici*, or parties in CPUC proceedings, to  
 18 PG&E's meetings with CPUC staff designed to influence PG&E's federal criminal  
 19 probation. Nor did PG&E file its March 2021 LiDAR study in any docket for CPUC  
 20 proceedings, though its analysis might be relevant to several CPUC proceedings.

21 PG&E's submissions in Dkt. 1337 and 1354 attempt to falsely portray itself  
 22 as willing to cooperate with the proposed modification of its probation conditions.

---

23

24

25 <sup>1</sup> See CPUC Rules of Practice and Procedure, effective April 1, 2018, Rule 8, ex  
 26 *parte* requirements for meetings with decision-makers,  
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M209/K618/209618807.PDF>; CPUC Ex Parte Communications,  
<https://www.cpuc.ca.gov/exparte.communications/> (last visited March 28, 2021).

1 Meanwhile, PG&E was attempting to manipulate its state regulator into expressing  
 2 concerns about the effect of proposed probation conditions 11 and 12.

3 As indicated by the documents PG&E and the CPUC produced on March 22  
 4 just before midnight, PG&E began pursuing CPUC staff on March 1st seeking a  
 5 meeting to discuss probation conditions 11 and 12. According to Dkt. 1360, Exhibit  
 6 2, PG&E sent an email request to CPUC staff on March 1st asking for a meeting to  
 7 discuss probation conditions 11 and 12. PG&E and CPUC staff met on March 8. As  
 8 indicated by Dkt. 1360, Exhibit 4, prior to that meeting PG&E sent to CPUC staff a  
 9 document entitled “CPUC Distribution HFTD Lidar Review for Potential Inclusion  
 10 in PGE Distribution PSPS Criteria 2021-03-08 (003).pdf,” PG&E’s March 2021  
 11 Lidar study.

12 A hearing in PG&E’s criminal probation case was initially set for March 9,  
 13 2021. That hearing was later rescheduled to March 11, then consolidated with the  
 14 hearing on March 23, 2021. PG&E appears to have been anxious to meet with  
 15 CPUC staff prior to the March 9 hearing to discuss PG&E’s analysis of High Fire  
 16 Threat Districts (HFTD) and influence the CPUC’s opinion about and comment to  
 17 the Court regarding probation conditions 11 and 12. The criminal probation hearing  
 18 was postponed until March 23, 2021, providing more time for communications from  
 19 PG&E to the CPUC.

20 PG&E met with the CPUC on March 8, 2021 (as indicated by Dkt. 1360,  
 21 Exhibit 5 thanking CPUC staff for meeting with PG&E “on Monday” referring to  
 22 March 8, 2021). For that meeting, PG&E gave the CPUC PG&E’s March 2021  
 23 Lidar study relevant to PG&E’s analysis of the potential effects of proposed  
 24 probation conditions 11 and 12 if applied to the decade between 2010 and 2019.

25 Throughout this process, it appears the CPUC was PG&E’s target. The  
 26 CPUC’s March 19 letter raises concerns that PG&E may have fed the CPUC  
 27 misleading information regarding the impact of the proposal to require PG&E to  
 28 consider the status of its vegetation management in making decisions about PSPS.

1     Indeed, the CPUC may find it prudent to consider whether PG&E committed a Rule  
 2     1 violation based on PG&E’s representations to the CPUC about the potential PSPS  
 3     increase if probation conditions 11 and 12 were adopted.

4                 PG&E should have also disclosed to the CPUC that the March 2021 Lidar  
 5     study was relevant to this Court’s questions. There is no indication PG&E informed  
 6     the CPUC that it had not produced that document in PG&E’s federal criminal  
 7     probation proceeding, though the document was responsive to this Courts proposed  
 8     criminal probation conditions and questions 22 and 24 from Dkt. 1307.

9                 On March 8, and perhaps on other occasions, PG&E met with CPUC staff and  
 10    conveyed the 2021 Lidar study. PG&E did not produce that document to this Court  
 11    on March 12, though it was responsive to this Court’s order directing PG&E to  
 12    answer questions 22 and 24.

13                 PG&E’s communications with the CPUC appear to have induced the CPUC  
 14    to state that PSPS would double if probation conditions 11 and 12 were imposed. In  
 15    Dkt. 1349, p. 4, the CPUC on March 19, 2021, the CPUC stated that based on its  
 16    conversations with PG&E, the CPUC was concerned that PSPS may double if  
 17    probation conditions 11 and 12 were adopted. The CPUC stated:

18                 In summary, the potential doubling of Public Safety Power Shutoff  
 19    (“PSPS”) events in PG&E’s service territory under these modified  
 20    Proposed Conditions could translate into a corresponding or even  
 21    greater increase in the public safety perils flowing directly from the use  
 22    of PSPS. (*Id.*).

23                 The CPUC’s concern that probation conditions 11 and 12 would result in “doubling”  
 24    PSPS appears to derive from PG&E’s representations to the CPUC.

25                 The CPUC’s comments on March 19, in Dkt. 1349, mention communications  
 26    between the CPUC and PG&E:

27                 In the course of recent communications between PG&E and CPUC  
 28    staff, CPUC staff asked PG&E to assess how its plan for implementing  
 29    the modified Proposed Condition Nos. 11 and 12 would affect the size,  
 30    scope, and frequency of PSPS events in its service territory. PG&E

1 provided CPUC staff with estimates, based on historic weather data  
 2 from 2010 – 2019. PG&E’s estimates show that, had PG&E conducted  
 3 PSPS over that time period,<sup>1</sup> adding the revised Probation Conditions  
 4 Nos. 11 and 12 as triggers to execute a PSPS event would have more  
 5 than doubled the total number of PSPS events conducted in PG&E’s  
 6 service territory.

7 Neither the CPUC nor PG&E have clarified who was responsible for the  
 8 interpretation that PSPS would double in PG&E’s service territory if probation  
 9 conditions 11 and 12 were adopted. *Amici* respectfully recommend this Court order  
 10 PG&E (and request the CPUC) to produce documentation, and if appropriate,  
 11 provide testimony to a Special Master appointed by this Court, to determine the  
 12 source of this mischaracterization.

13 The only document the CPUC or PG&E produced regarding CPUC staff  
 14 questions asking about PG&E’s assessment of “how its plan for implementing the  
 15 modified Proposed Condition Nos. 11 and 12 would affect the size, scope, and  
 16 frequency of PSPS events in its service territory” is Dkt. No. 1360, Exhibit H (at  
 17 39). In that March 18, 2021, email, a CPUC staff member asks PG&E Senior  
 18 Director, Regulator Relations, Meredith Allen:

19 Meredith, can you clarify for me what is reflected in the “PSPS Total  
 20 Events 10 Year” – is that the average of the total number of events in  
 21 each county in PG&E territory over the 10-year period? (It’s not an  
 22 average annual number of events correct?) Trying to understand the  
 23 difference between slides 4 and 5.

24 Neither the CPUC nor PG&E have produced any other documents regarding  
 25 questions from CPUC staff to PG&E about the size, scope, and frequency of PSPS  
 26 events in its service territory relevant to proposed probation conditions 11 and 12.

27 On the morning of the March 23, 2021 hearing, in Dkt. 1359 the CPUC  
 28 submitted a letter apologizing to this Court for the overstatement that proposed  
 probation conditions 11 and 12 would have resulted in a potential doubling of PSPS.  
 The CPUC explained that PG&E’s 2021 LiDAR study indicated a potential

1 doubling of PSPS only in certain counties where PG&E documented a high number  
 2 of trees tall enough to strike its lines:

3 The CPUC sincerely apologizes for its overstatement that Pacific Gas  
 4 and Electric Company's ("PG&E") estimates of customer impacts  
 5 flowing from its envisioned implementation of modified Proposed  
 6 Conditions 11 and 12 would result in a "potential doubling of Public  
 7 Safety Power Shutoff ("PSPS") events in PG&E's service territory."  
 8 ECF 1349 at 4 of 7; see also ECF 1349 at 5 of 7 ("... would have more  
 9 than doubled the total number of PSPS events conducted in PG&E's  
 service territory."). The CPUC wishes to correct this error and present  
 the Court with more precise and correct statements as soon as it realized  
 these inappropriately unqualified statements.

10 The correct characterization of PG&E's estimates of customer impacts  
 11 as a result of implementing modified Proposed Conditions 11 and 12 is  
 12 that it would have resulted in a potential doubling of PSPS events in  
 some of the counties in PG&E's service territory.

13 The CPUC's correction does not explain whether PG&E was the source of the  
 14 asserted doubling of PSPS. In Dkt. 1349, p. 7, the CPUC appears to attribute the  
 15 characterization that probation conditions 11 and 12 would double PSPS to PG&E.  
 16 *Amici* respectfully recommend that this Court's OSC regarding whether PG&E  
 17 engaged in contempt of court or committed other federal offenses including  
 18 obstruction of justice investigate and determine the source of that misrepresentation.

20 **D. PG&E's Circumvention of This Court Influenced the Public Dialogue  
 21 about Proposed Probation Conditions 11 and 12 and Interfered with the  
 22 Administration of Justice in PG&E's Federal Criminal Probation**

23 The CPUC's comment expressing concern about the potential expansion of  
 24 PSPS as a result of probation conditions 11 and 12 based on PG&E's then  
 25 undisclosed analysis was promptly reported in the press. On March 19, Courthouse  
 26 News reported:

27 "The California Public Utilities Commission also raised concerns about  
 28 the proposed conditions in a letter Friday, noting that a requirement to

1 factor in tree density “may unduly broaden PG&E’s [public safety  
 2 power shutoff] events beyond the scope that has been vetted by safety  
 3 experts and parties in ongoing CPUC proceedings.”<sup>2</sup>

4 On the morning of March 23, prior to this Court’s probation modification hearing,  
 5 KQED’s California Report stated that the California Public Utilities “Commission  
 6 oppose also Alsup’s proposal. They argue it will dramatically increase the number  
 7 in size of future blackouts and pose new risks to public safety.”<sup>3</sup>

8 PG&E succeeded in achieving public repetition of the story it may have  
 9 provided to the CPUC that PSPS would double if probation conditions 11 and 12  
 10 were adopted. At the same time, PG&E deprived this Court, parties, *Amici*, and the  
 11 public the opportunity to engage in meaningful analysis of the basis for those  
 12 statements which were misaligned with PG&E’s 2021 LiDAR study. That study was  
 13 based on a flawed methodology that comment from the parties would have sooner  
 14 revealed.

15 The harm in this federal criminal probation is clear: PG&E’s failure to  
 16 produce this analysis relevant to its probation conditions, and to the Court’s direct  
 17 questions to PG&E, prevented the parties in this matter from analyzing PG&E’s  
 18 assertions prior to midnight before the hearing. The CPUC’s limited description on  
 19 Friday, March 19, 2021 of the analysis PG&E provided to the CPUC, without  
 20 disclosure of the underlying document, provided an insufficient basis for analysis of  
 21 the methodological flaws underlying the assumption PG&E perpetrated.

22 On March 22, 2021, in Dkt. 1366, *Amici* filed a request to file a brief, p. 6 of  
 23 which asks this Court to order PG&E to provide the basis for the analysis the CPUC

25 <sup>2</sup> Nicolas Iovino, *California Officials Oppose PG&E Mandates That Could Expand*  
 26 *Blackouts*. Courthouse News Service, Feb. 19, 2021.  
[https://www.courthousenews.com/california-officials-oppose-pge-mandates-that-could-expand-blackouts//](https://www.courthousenews.com/california-officials-oppose-pge-mandates-that-could-expand-blackouts/)

27 <sup>3</sup> KQED, California Report, March 23, 2021,  
[https://archive.org/details/KQED\\_88\\_5\\_FM\\_20210323\\_100000?start=10464&q=increase+power+shutoffs+public+utilities+](https://archive.org/details/KQED_88_5_FM_20210323_100000?start=10464&q=increase+power+shutoffs+public+utilities+)

1 cited on March 19. In that filing, *Amici* states “***Amici respectfully recommend this  
Court order PG&E to provide any basis for that analysis under oath in a manner  
publicly available through this docket.***” (*Id.*, emphasis in the original).

4       *Amici*’s March 22 filing asked about the causes of the asserted “doubling” of  
5 PSPS:

6       This [the CPUC’s March 19] recounting of PG&E’s statement to the  
7 CPUC omits any analysis of the underlying cause of such an increase.

- 8           • Is PG&E’s record-keeping and information management so deficient  
9           that PG&E would double PSPS if it took the status of vegetation  
10          management into account because it is unable to ascertain the status of  
11          its vegetation management compliance?
- 12          • Is PG&E’s vegetation management so poor that PSPS would double  
13          if PG&E took compliance with federal and state vegetation  
14          management rules into account?
- 15          • Is there another cause or violation(s) of state or federal law that would  
16          drive this asserted doubling in PSPS if the status of PG&E’s vegetation  
17          management were considered?
- 18          • What are the barriers to PG&E’s compliance with its vegetation  
19          management obligations that would reduce the increase from  
20          considering this factor?

21       *Amici* emphasized the imperative of receiving evidence regarding the asserted  
22 causes of PSPS increases, rather than merely stating anticipated potential  
23 consequences:

24       Focus on the *outcome* of consideration of PG&E’s vegetation  
25 management on PSPS as contemplated by probation conditions 11 and  
12 overlooks PG&E’s *conduct* that it believes would *cause* that  
outcomes. It is imperative to public safety and to rehabilitation of PG&E  
that PG&E disclose the basis for its analysis under oath, and subject  
that analysis to public scrutiny in this federal criminal probation.

26       PG&E failed to timely produce its March 2020 Lidar study and disclose that it had  
27 given the document to the CPUC on March 8. PG&E failed to disclose its  
28 representations to the CPUC and the basis for the CPUC’s March 19 letter that

1 stated PSPS would double if probation conditions 11 and 12 were adopted. PG&E’s  
 2 conduct interfered with this Court’s administration of justice. PG&E effectively  
 3 denied this Court, the United States Department of Justice, the Federal Monitor,  
 4 *Amici* representing PG&E customers Canarra and Nelson—who are concerned  
 5 about PG&E’s poor safety record—and other *Amici*, the opportunity to timely  
 6 analyze and comment on the basis for PG&E’s representations to the CPUC and  
 7 asserted increase in PSPS.

8

9                   **III. PG&E’S CONDUCT RAISES CONCERN ABOUT WHETHER**  
 10                   **PG&E ENGAGED IN A PATTERN OF CONTEMPT OF COURT OR**  
 11                   **OTHER OFFENSES INCLUDING OBSTRUCTION OF JUSTICE**

12                   PG&E’s deliberate and knowing attempts to circumvent this Court interfere  
 13 with the administration of justice in PG&E’s federal criminal probation. PG&E  
 14 needed only produce its March 2021 Lidar study on March 12 as an Exhibit to  
 15 explain its analysis in response to questions 22 and 24. PG&E had an opportunity  
 16 every day to file that study after it prepared that analysis. PG&E should have filed  
 17 that study when PG&E gave it to the CPUC on March 8, 2021. PG&E should have  
 18 filed that study as an exhibit to its response to questions 22 and 24 filed on March  
 19 12, 2021. PG&E should have filed that analysis on the afternoon of March 22, 2021  
 20 when it emphasized the importance of the “fire risk thresholds” PG&E had provided  
 21 to the CPUC. Despite filing thousands of pages of documents between March 8-22,  
 22 2021, did not produce the *one* document it sent to the CPUC to persuade the CPUC  
 23 to oppose probation conditions 11 and 12 and repeat PG&E’s representations about  
 24 the effect of those probation conditions.

25                   This was a deliberate pattern of conduct carried out apparently by several  
 26 people at PG&E and perhaps, by people retained by PG&E. This series of actions  
 27 raises questions about what PG&E’s lawyers knew in their filings of March 12 and  
 28 March 22.

1       Did PG&E’s lawyers know about PG&E’s meetings with the CPUC and its  
 2 submission of the March 2021 Lidar study to the CPUC on March 8? Some of  
 3 PG&E’s regulatory attorneys set up the March 8 meeting and may have attended  
 4 that meeting with the CPUC. Were PG&E’s counsel who filed its March 12 answer  
 5 to this Court’s question 22 and 24 aware of PG&E’s 2021 LiDAR study and the  
 6 March 8 meeting with the CPUC?

7       PG&E’s March 22 filing in PG&E Dkt. No. 1354 (at 3) emphasizes to the  
 8 Court that “PG&E shared with the CPUC the fire risk thresholds that it has been  
 9 considering to address the issue of tall trees in proximity to PG&E’s lines.” Yet, the  
 10 lawyers who signed PG&E Dkt. No. 1354 did not disclose the basis for the analysis  
 11 they referenced, nor the prior submission of that document to the CPUC.

12      Neither did the lawyers who filed the March 12 answer to the questions of  
 13 this Court mention the “Distribution HFTD Lidar” document PG&E provided to the  
 14 CPUC on March 8. The answer to question 24 so closely touches on the analysis in  
 15 that document that it suggests the lawyers who filed the March 12 answer to this  
 16 Court’s questions may have been aware of that document. This pattern raises  
 17 troubling questions about the role of PG&E, PG&E personnel and agents including  
 18 its legal counsel. It appears PG&E and its agents engaged in a pattern of conduct  
 19 designed to keep the March 2021 Lidar study out of the view of this Court, the US  
 20 DOJ, the Monitor, *Amici*, and the public, while attempting to persuade the CPUC to  
 21 oppose probation conditions 11 and 12.

22      PG&E has recognized that the corporation and the people who engaged in this  
 23 pattern of conduct may have deliberately attempted to interfere with this Court’s  
 24 administration of PG&E’s federal criminal probation.

25      *Amici* are concerned about how long PG&E has been engaging in this pattern  
 26 and about its previous communications with the CPUC, Cal OES, and others  
 27 including any potential communications with the California Governor’s Office or  
 28 the California Legislature or the press that may have attempted to interfere with the

1 administration of PG&E's criminal probation by providing information to those  
 2 entities not disclosed in its federal criminal probation.

3       Were recidivist felon PG&E a person rather than a corporation, PG&E would  
 4 remain incarcerated, unable to reach or communicate with a wide range of officials,  
 5 to persuade those officials in weighing in against probation conditions. PG&E, a  
 6 recidivist convicted felon, does not wear an orange jumpsuit as do those convicted  
 7 *in persona*. Yet, PG&E stands before this Court and the public as a convicted felon.  
 8 Sadly, PG&E's conduct does not reflect the respect for justice and its federal  
 9 criminal probation due from a federal convict.

10      Apparently anxious to avoid additional probation conditions, PG&E visited  
 11 and communicated with some officials including CPUC staff about its federal  
 12 criminal probation. PG&E's March 2021 LiDAR study and conversations with  
 13 CPUC staff induced the CPUC to file a letter with misstatements about the potential  
 14 consequences of probation conditions 11 and 12. PG&E could have communicated  
 15 its March 2021 LiDAR study to this Court no later than March 12, 2021, and  
 16 forthrightly made its legal arguments about the analysis of that study. Instead,  
 17 PG&E appears to have chosen to have subverted justice, this time before the federal  
 18 criminal court.

19      Apart from this criminal proceeding, PG&E's Senior Executives and Board of  
 20 Directors should examine whether PG&E staff and representatives attempted to  
 21 circumvent this Court's administration of federal criminal probation. PG&E should  
 22 determine whether the action of its executives, employees and representatives was  
 23 consistent with PG&E's guidelines and standards.

24      ///

25      ///

26      ///

27      ///

28      ///

1           **A. PG&E's Pattern of Evasion Indicates that PG&E May Have Committed**  
 2           **Civil or Criminal Contempt of Court, or Other Federal Offenses**  
 3           **Including Obstruction of Justice, Meriting Briefing in Response to an**  
 4           **Order to Show Cause about this Matter.**

5           As *Amici* stated at the March 23, 2021 hearing, *Amici* are concerned that  
 6 PG&E's conduct may constitute contempt of court. Contempt of court is defined as  
 7 any act which is calculated to embarrass, hinder, or obstruct a court in the  
 8 administration of justice, or which is calculated to lessen the authority or dignity of  
 9 a court.<sup>4</sup> The power to punish acts of contempt is inherent in all courts.<sup>5</sup> *Amici*  
 10 recommend the court examine whether PG&E's pattern of conduct regarding the  
 11 proposed probation conditions reflects civil or criminal contempt of court.

12           Federal statute 18 U.S.C. § 401, grants the federal courts broad powers to  
 13 punish acts of criminal contempt. This general federal contempt statute states:

14           A court of the United States shall have the power to punish by  
 15 fine or imprisonment, at its discretion, such contempt of its authority,  
 16 and none other, as –

- 17           (1) Misbehavior of any person in its presence or so near thereto as to  
               obstruct the administration of justice;
- 18           (2) Misbehavior of any of its officers in their official transactions;
- 19           (3) Disobedience or resistance to its lawful writ, process, order, rule,  
               decree, or command.

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22           <sup>4</sup> Joel M. Androphy and Keith A. Byers, *Federal Contempt of Court*, Berg &  
 23 Androphy, <https://www.bafirm.com/publication/federal-contempt-of-court/>, (last  
 24 visited, March 25, 2021) (citing Black's Law Dictionary 288 (5th ed. 1979)).

25           <sup>5</sup> *Id.* (citing Chambers v. NASCO, Inc., 501 U.S. 32 (1991); accord Roadway  
 26 Express, Inc. v. Piper, 447 U.S. 752, 764 (1980); Green v. United States, 356 U.S.  
 27 165 (1958); Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911); United  
 28 States v. Shipp, 203 U.S. 563 (1906); *In re Terry*, 128 U.S. 289 (1888); *Ex parte  
 Robinson*, 86 U.S. (19 Wall.) 505 (1873); *Anderson v. Dunn*, 19 U.S. (6 Wheat) 204  
 (1821).

To establish a criminal violation of § 401(l), the following four elements must be established beyond a reasonable doubt:

- (1) misbehavior,
- (2) in or near the presence of the court,
- (3) with criminal intent,
- (4) that resulted in an obstruction of the administration of justice.<sup>6</sup>

*Amici* recommend additional briefing about whether PG&E may have committed civil or criminal contempt of Court.

Any attempt to rebuff such an Order to Show cause by proffering an excuse such as PG&E's failure to realize the responsiveness and relevance of its study to this federal criminal probation proceeding is belied by its response in Dkt. 1377 which seems to be based on PG&E's analysis in that document. PG&E's brief filed on March 22 in Dkt. 1354, p. 4 emphasizes the importance of that study to analysis of probation conditions 11 and 12 without naming that study or disclosing that PG&E had provided it two weeks early to the CPUC. Briefs in response to the OSC and fact-finding by this Court will illuminate whether PG&E committed contempt of court and underscore the respect due to this Court and federal criminal probation.

*Amici* also recommend this Court order PG&E to disgorge information about other communications it may have had with officials regarding its probation conditions. This Court has the latitude to determine the timeframe for that inquiry, whether dating from the Zogg fire, from the 2017 Wine County fires, or throughout PG&E's federal criminal probation.

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<sup>6</sup> *Id.* (citing *American Airlines, Inc. v. Allied Pilots Ass'n*, 968 F.2d 523,531 (5th Cir. 1992)). Except in summary proceedings involving direct criminal contempts where the judge has personally witnessed the commission of the act in question, all other criminal contempts must be proved beyond a reasonable doubt. See *Bagwell*, 114 S.Ct. at 2557).

1        As part of its Order to Show Cause about whether PG&E should be held in  
 2 contempt of Court, *Amici* also recommend this Court consider appointing a Special  
 3 Master to analyze and report to this court by July 2021 to determine whether facts  
 4 exist to support this court's referral to the U.S. Attorney's Office for Obstruction of  
 5 Justice and Conspiracy to Obstruct Justice. Review of the facts regarding PG&E's  
 6 attempt to circumvent and undermine this Court's administration of PG&E's federal  
 7 criminal probation raises serious questions about whether PG&E obstructed justice  
 8 or conspired to obstruct justice.

9        18 USC 1503 prohibits obstruction of justice in pending federal court  
 10 proceedings. 18 USC 1503(a) states:

11        Whoever corruptly, or by threats or force, or by any threatening letter  
 12 or communication, endeavors to influence, intimidate, or impede any  
 13 grand or petit juror, or officer in or of any court of the United States, or  
 14 officer who may be serving at any examination or other proceeding  
 15 before any United States magistrate judge or other committing  
 16 magistrate, in the discharge of his duty...or corruptly or by threats or  
 17 force, or by any threatening letter or communication, influences,  
 18 obstructs, or impedes, or endeavors to influence, obstruct, or impede,  
 19 the due administration of justice, shall be punished as provided in  
 20 subsection.

21        The elements of a *prima facie* case of obstruction of justice are: (1) the existence of  
 22 a judicial proceeding; (2) knowledge or notice of the pending proceeding; (3) acting  
 23 corruptly with the intent of influencing, obstructing, or impeding the proceeding in  
 24 the due administration of justice: and (4) the action had the natural and probable  
 25 effect of interfering with the due administration of justice.”<sup>7</sup> This statute may apply  
 26 to pending criminal proceedings such as PG&E's federal criminal probation.

27        In addition, this Court should consider whether PG&E engaged in witness  
 28 tampering in its federal criminal probation in violation of 18 U.S. Code § 1512.

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<sup>7</sup> *United States v. Sussman*, 709 F.3d 155, 168 (3d Cir. 2013) (“Under 18 U.S.C. §1503(a); *United States v. Thomas*, 612 F.3d 1107, 1128-129 (9th Cir. 2010).

1 18 U.S. Code § 1512 prohibits tampering with a witness:

2 (b)Whoever knowingly uses intimidation, threatens, or corruptly  
 3 persuades another person, or attempts to do so, or engages in misleading  
 4 conduct toward another person, with intent to—  
 5 (1) influence, delay, or prevent the testimony of any person in an  
 6 official proceeding;  
 7 (2) cause or induce any person to—  
 8 (A) withhold testimony, or withhold a record, document, or other  
 9 object, from an official proceeding;  
 10 (B) alter, destroy, mutilate, or conceal an object with intent to impair  
 11 the object's integrity or availability for use in an official proceeding;  
 12 (C) evade legal process summoning that person to appear as a witness,  
 13 or to produce a record, document, or other object, in an official  
 14 proceeding; or  
 15 (D) be absent from an official proceeding to which such person has  
 16 been summoned by legal process; or  
 17 (3) hinder, delay, or prevent the communication to a law enforcement  
 18 officer or judge of the United States of information relating to the  
 19 commission or possible commission of a Federal offense or a violation  
 20 of conditions of probation supervised release, parole, or release pending  
 21 judicial proceedings;  
 22 shall be fined under this title or imprisoned not more than 20 years, or  
 23 both.

24 “The term “corruptly” in the phrase “corruptly persuades” as it appears in subsection  
 25 1512(b) has been found to refer to the manner of persuasion, the motive for  
 26 persuasion, and the manner of obstruction.”<sup>8</sup>

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27 <sup>8</sup> Charles Doyle, *Obstruction of Justice: An Overview of Some of the Federal*  
 28 *Statutes That Prohibit Interference with Judicial, Executive, or Legislative*  
*Activities*, Congressional Research Service, at 11 (April 17, 2014),  
<https://fas.org/sgp/crs/misc/RL34303.pdf> (citing, for example, *United States v. LaShay*, 417 F.3d 715, 718 (7th Cir. 2005)(“corrupt persuasion occurs where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it”)(very much like the offenses elsewhere in subsection 1512(b) of “knowingly ... engag[ing] in misconduct toward another person” with obstructive intent); *United States v. Gotti*, 459 F.3d 296, 343 (2d Cir. 2006)(“This Circuit has defined ‘corrupt persuasion’ as persuasion that is ‘motivated by an improper purpose.’ *United States v. Thompson*, 76 F.3d 442, 452 (2d Cir. 1996); *United States v. Baldridge*, 559 F.3d 1126, 1143 (10th Cir. 2009)

1       Although often applied at trial, this statute may be applicable in federal  
2 criminal probation where the convicted felon attempts to interfere with the  
3 administration of justice by providing misrepresentations to a party such as the  
4 CPUC whose opinion the Court invited Dkt. 1317:

5       The key question that the Court has for the CPUC and the California  
6 Governor's Office of Emergency Management is:

7       What specific procedure would you require of PG&E in its implementation of  
8 the PSPS process that would have prevented the Zogg Fire and four deaths  
9 resulting therefrom?

10      Be aware that PG&E and the United States have both said that the proposal  
11 made by them would not have prevented the Zogg Fire.

12      The CPUC responded in 1320 on February 26, 2021:

13      The CPUC does not disagree with the Court that the state of PG&E's  
14 vegetation management could be an appropriate consideration when  
15 determining whether to deenergize any distribution line as part of a  
16 Public Safety Power Shutoff, but we can go no further at this time,  
17 without fully vetting and allowing expert and public comment on the  
18 competing considerations. Through its February 19, 2021 submission  
19 to the Court, the CPUC was attempting to advise the Court of the innate  
20 hazards that come with large-scale PSPS events and the concern  
21 expressed by many participants in CPUC proceedings about the  
22 vulnerabilities they face when these events occur.

23      This response and the CPUC's February 19, 2021, filing by the CPUC also respond  
24 to probation conditions 11 and 12.

25      With deep concern and respect, *Amici* recommend this Court's Order to Show  
26 Causes examine whether PG&E's conduct is tantamount to witness tampering in  
27 PG&E's federal criminal probation. *Amici* recommend this Court issue an Order to

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28      ("["T]he 'corruptly persuades' element requires the government to prove a  
29 defendant's action was done voluntarily and intentionally to bring about false or  
30 misleading testimony or to prevent testimony with the hope or expectation of some  
31 benefit to the defendant or another person").

1 Show Cause and/or appoint a Special Master to determine if the facts support a  
 2 referral to the U.S. Attorney's Office to determine whether PG&E obstructed justice  
 3 or engaged in a conspiracy to obstruct justice or engaged in criminal contempt of  
 4 court through its conduct in federal criminal probation.

5 PG&E was convicted in 2017 of obstructing justice in the NTSB's  
 6 investigation. PG&E's five-year federal criminal probation was imposed to protect  
 7 public safety and rehabilitate the offender following its conviction for obstruction of  
 8 justice and violations of the National Gas Pipeline Safety Act. PG&E's conduct  
 9 raises serious questions about whether PG&E committed contempt of court and  
 10 potentially obstruction of justice and conspiracy to obstruct justice in its federal  
 11 criminal probation.

12 Rehabilitation of the offender has apparently not been achieved during  
 13 PG&E's probation as PG&E continues its evasive behavior that interferes with  
 14 administration of justice. PG&E's criminal thinking continues to drive its criminal  
 15 conduct. As a result, at least 115 lives have been lost due to PG&E's conduct during  
 16 its federal criminal probation (111 referred to in Dkt. No. 1277, p. 2, with the  
 17 addition of four more who died in the 2020 Zogg fire).

18 PG&E's disrespect for this Court and its federal criminal probation are  
 19 evident in PG&E's attempts to evade this Courts questions and jurisdiction. PG&E  
 20 did not engage in forthright legal argument. Instead, PG&E deliberately evaded this  
 21 Court through its campaign to induce the CPUC to oppose proposed probation  
 22 conditions 11 and 12 designed to safeguard lives and rehabilitate PG&E. *Amici*,  
 23 representing PG&E customers Nelson and Canara who are concerned about PG&E's  
 24 recklessly poor safety record, are dismayed that more than four years into PG&E's  
 25 federal criminal probation, PG&E continues to attempt to dodge and evade this  
 26 Court and PG&E responsibilities to the public and to the administration of justice.

27       ///

28       ///

1                   **IV. CONCLUSION**

2                   For the reasons discussed above, *Amici* respectfully recommend that this  
 3 Court: 1) issue an order to show cause to determine whether PG&E committed civil  
 4 or criminal contempt of court; 2) appoint a Special Master to investigate and  
 5 promptly report to this court by July 2021 facts relevant whether this court should  
 6 refer PG&E and/or some of its officers, employees, or agents to the U.S. Attorney's  
 7 Office to investigate whether PG&E engaged in obstruction of justice, a conspiracy  
 8 to obstruct justice, or criminal contempt of court; and; 3) as part of its OSC on  
 9 contempt of court, direct PG&E to publicly file in this docket all records of its  
 10 communication with the CPUC, Cal OES, the California Governor's Office,  
 11 California legislature members, staff, or committees, and members of the press  
 12 regarding this Court's probation conditions, and order PG&E to file publicly in this  
 13 docket records and summaries of any such communications regarding PG&E's  
 14 federal criminal probation for the duration of its probation term.

15                  *Amici* offers these suggestions to safeguard the integrity of the administration  
 16 of justice in PG&E's criminal probation, to protect public safety, and rehabilitate  
 17 PG&E, consistent with the goals of federal criminal probation. Amici respectfully  
 18 appreciates the Court's consideration of these weighty matters.

19  
 20                  CATHERINE J. KISSEE-SANDOVAL  
 21                  Associate Professor  
 22                  Santa Clara University School of Law

23                  Dated: March 29, 2021

/s/Catherine J.K. Sandoval, Esq.,  
 AGUIRRE & SEVERSON, LLP

25                  Dated: March 29, 2021

/s/Maria C. Severson  
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